United Nations S/2005/257

Security Council

Distr.: General
19 April 2005

Original: English

Letter dated 18 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 16 December 2004 (S/2004/1002). The Counter-Terrorism Committee has received the attached fifth report from Belarus submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

05-31557 (E) 060505 090505

Letter dated 14 April 2005 from the Permanent Representative of Belarus to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit to you the fifth report of the Republic of Belarus to the Counter-Terrorism Committee submitted in response to your letter of 10 December 2004 (see enclosure).

The Government of the Republic of Belarus stands ready to provide the Committee with additional reports or information that may be requested by the Committee.

I would be grateful if you would have the report circulated as a document of the Security Council.

(*Signed*) Andrei **Dapkiunas**
Ambassador

Enclosure

[Original: Russian]

Fifth report of the Republic of Belarus submitted to the Counter-Terrorism Committee, in accordance with paragraph 6 of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 The International Convention for the Suppression of the Financing of Terrorism entered into force for Belarus on 5 November 2004. The Act ratifying the International Convention for the Suppression of the Financing of Terrorism was adopted on 5 July 2004.

Belarus has drawn up two draft laws aimed at achieving suitable implementation of the Convention and at adopting additional measures — within the framework of Security Council resolution 1373 (2001) — to prevent the financing of terrorism: (a) a draft law amending and supplementing certain legislative acts of the Republic of Belarus regarding issues connected with combating the financing of terrorist activity and (b) a draft law amending and supplementing the Act of the Republic of Belarus "on measures to prevent the legalization of funds obtained by illegal means".

The President has referred these draft legislative acts to the National Assembly (parliament) for consideration at its 2005 spring session.

Question on measures to *criminalize financial support of terrorism, except where such financial support is provided through complicity in related criminal activities; provide for prosecution of persons who provide financing of a group that is engaged in terrorist activities.*

Answer: The draft law on amending and supplementing certain legislative acts of the Republic of Belarus regarding issues connected with combating the financing of terrorist activity provides for amending and supplementing the Act of the Republic of Belarus of 3 January 2002 "on counter-terrorism" and the Criminal Code of the Republic of Belarus.

The Criminal Code will specify the liability of natural persons for financing terrorist activity, while the Act "on counter-terrorism" will lay down the liability of legal persons for financing terrorist activity.

Currently, the acts figuring in article 2 of the Convention are not distinct categories of offences under the criminal law of Belarus. Criminal liability for such acts is determined on the basis of article 16 of the Criminal Code of the Republic of Belarus (complicity in a crime). Consequently, the plan is to add to the Criminal Code a new article establishing natural persons' criminal liability for financing terrorist activity.

More specifically, the Criminal Code will define the financing of terrorist activity as "wilfully providing or collecting funds or other assets, by whatever means, for intended use in terrorist activity". The proposed penalty for persons or groups of persons perpetrating such crimes is imprisonment with confiscation of property.

The new article of the Criminal Code will contain a specific section dealing with the criminal liability of persons who use their official authority to finance terrorist activity. It will regulate matters of criminal liability in the case of natural persons responsible for the management or supervision of a legal person involved in financing terrorist activity.

Currently, the liability of legal persons for financing terrorist activity is provided for in part in article 23 of the Act of the Republic of Belarus "on counter-terrorism".

Article 23, which deals with organizations' liability for terrorist activity, establishes that an organization registered in the Republic of Belarus may be deemed a terrorist organization by a court decision, and therefore closed down in accordance with established legal procedures. When an organization deemed to be terrorist in nature is closed down, property belonging to it is confiscated.

According to article 3 of the Act, "terrorist activity" includes financing a known terrorist organization or group.

The draft law proposes to add to article 3 of the Act "on counter-terrorism" a definition of the "financing of terrorism" (wilfully providing or collecting funds or other assets, by whatever means, for intended use in terrorist activity).

A special article will also be added to the Act "on counter-terrorism" to cover liability of legal persons for the financing of terrorist activity.

The new article will reinforce the provision that a legal person shall be deemed, by a decision of the Supreme Court, to be terrorist in nature and closed down if an official responsible for its management or supervision finances terrorist activity. When a legal person involved in financing terrorist activity is closed down, property belonging to it is confiscated. The same procedure will apply to the subsidiaries (representative offices) in Belarus of a foreign or international organization registered outside Belarus.

Question on *allowing the freezing of funds linked to terrorist organizations; Authorize the freezing of funds "without delay", pursuant to paragraph 1(c) of the resolution.*

Answer: The draft law amending and supplementing the Act of the Republic of Belarus "on measures to prevent the legalization of funds obtained by illegal means" provides for the possibility of suspending financial transactions (except the crediting of funds received) if one of the participants in the transaction is involved in terrorist activity or is directed by persons involved in terrorist activity.

A suspended financial transaction may be resumed if the financial monitoring body informs the person conducting the transaction that there is insufficient evidence that one of the parties to the transaction is involved in terrorist activity or is directed by persons involved in terrorist activity.

The provisions in question will thus result in more effective freezing of accounts containing suspicious funds, including those connected with terrorist activity.

Question on *the requirement to report suspicious transactions by all financial institutions, as well as by insurance companies and other such intermediaries engaged in financial transactions.*

Answer: Belarus has taken action aimed at further improving national legislation, taking account of the requirements of article 18 (b)* of the International Convention for the Suppression of the Financing of Terrorism and the recommendations of the Financial Action Task Force (FATF).

The draft law includes provisions obliging persons performing a financial transaction to register any transaction subject to special oversight on a special form within the working day upon learning that special oversight applies. The special form must be forwarded to the financial monitoring body no later than the next working day following registration.

The draft law establishes under what circumstances a financial transaction is subject to special oversight (in other words, is considered a "suspicious financial transaction").

More specifically, a financial transaction, whether completed or not, is subject to special oversight if one or more of the following conditions is met:

The person performing the financial transaction suspects that its purpose is to legalize funds or finance terrorism, or if the transaction is suspicious by virtue of other characteristics figuring on a list established by the Council of Ministers of the Republic of Belarus;

There is information that the person performing the financial transaction is involved in terrorist activity or is directed by persons involved in terrorist activity. The financial monitoring body will supply a list of such persons.

The draft law will strengthen the requirement to declare large financial transactions which exceed a certain amount. Financial transactions will be subject to special oversight if they equal or exceed 2,000 basic units for natural persons or 20,000 basic units for organizations or individual entrepreneurs and correspond in character to one of the following:

a transaction involving cash;

a transaction involving a client account or deposit;

a transaction involving an international payment or a postal transfer;

a transaction involving securities;

a credit or loan transaction connected with an international transfer;

a transaction involving movable or immovable property;

a transaction involving the transfer of a debt or assignment of a claim.

Question on *regulating the activities of alternative money transfer systems.*

Answer: Illegal and covert money-transfer methods, such as *hawala*, are banned and are considered unlawful in Belarus. Its legislation categorizes illegal money-transfer methods as crimes in the form of unlawful entrepreneurial activity (article 223 of the Criminal Code); they are prosecuted in accordance with article 134 of the Banking Code (liability for performing banking transactions without a licence).

* *Translator's note*: The Convention has no article 18 (b) as such: article 18 has four numbered paragraphs, with paragraphs 1 to 3 each having a subparagraph (b).

For performing banking transactions without a licence issued by the National Bank, a legal person may be closed down, and the activities of an individual entrepreneur may be halted, by the decision of a court, in accordance with established legal procedures (second section of article 134 of the Banking Code).

The activities of non-bank credit and financial institutions are regulated by section IV of the Banking Code.

In accordance with article 9, non-bank credit and financial institutions are recognized as legal persons with the right to perform certain banking transactions and activities, with the following overall exceptions:

Eliciting financial resources from natural and/or legal persons for deposit;

Investing elicited financial resources in their own name and for their own account, in a reimbursable, chargeable and time-bound manner;

Opening and administering bank accounts for natural and legal persons.

The National Bank defines the permitted combination of banking transactions which non-bank credit and financial institutions may perform.

Question on *preventing the financing of terrorist activities through, or by charitable and other non-profit organizations.*

Answer: Registration of charitable and other non-profit organizations is carried out by the Ministry of Justice and its local authority sub-offices.

Checks on the legality of non-profit organizations' activities, for purposes including preventing the financing of terrorism, are performed by the sub-departments of the State Monitoring Committee, the Ministry of Taxes and Duties and other entities.

Belarus has an effective mechanism for detecting illegal financial activity by non-profit organizations, all of whose financial transactions are checked for taxation purposes. There is, furthermore, a transparent mechanism, used in cases where financial and other resources are solicited from foreign States to implement projects, which exercises sufficient supervision of non-profit organizations' activities.

The principal means of preventing the financing of terrorism by charitable organizations are described in the fourth report of the Republic of Belarus to the Counter-Terrorism Committee.

1.2 Presidential decree No. 408 of 14 September 2003 established a Department of Financial Monitoring within the State Monitoring Committee. Under the terms of the Belarus Constitution, the State Monitoring Committee is constituted by the President of Belarus to exercise State supervision of the implementation of the national budget, the use of State property, the implementation of acts of the President, parliament, Government and other State entities that manage State property and deal with economic, financial and taxation matters.

The Department of Financial Monitoring is authorized to take steps to prevent the legalization of income obtained by illegal means, using methods including the collection and processing of data on financial transactions subject to special oversight.

The Department of Financial Monitoring also collaborates with the competent bodies of foreign States. Such activity includes supplying them with appropriate information — at their request or at its own initiative — in accordance with the procedure and principles laid down in international agreements and other legislative acts of Belarus, provided that such information would not harm the interests of the State. Another responsibility of the Department is taking part, in accordance with established procedures, in the work of international organizations regarding the prevention of the legalization of the proceeds of crime.

Belarus intends to establish a special State entity responsible for detecting suspicious transactions and preventing the financing of terrorism.

The draft law "on measures to prevent the legalization of income obtained by illegal means and the financing of terrorism" provides for the establishment of a State financial monitoring body whose responsibilities will include:

Monitoring the activities of persons who carry out financial transactions and their fulfilment of legislative requirements to prevent the legalization of income and the financing of terrorism;

Taking steps to prevent the legalization of income and the financing of terrorism, establishing and operating an automated system for accounting for, processing and analysing information on financial transactions subject to special oversight;

Issuing decrees on the suspension of financial transactions;

Transmitting relevant information and materials to the criminal prosecution agency where there are sufficient grounds to show that a financial transaction is related to the legalization of income or the financing of terrorism;

Developing and carrying out measures so that laws on prevention of the legalization of income and the financing of terrorism are not breached, generalizing the application of domestic legislation in this field, monitoring the procedure for carrying out financial transactions and other operations, and developing proposals to improve monitoring;

Involvement in the preparation of draft normative legal acts and in the conclusion and execution of international agreements on prevention of the legalization of income and the financing of terrorism;

Applying liability measures to persons who have breached laws on preventing the legalization of income and the financing of terrorism, in accordance with legislation;

As regards the competencies of other Government agencies of the Republic of Belarus dealing with prevention of the financing of terrorism, we refer to the provisions of a draft law amending and supplementing the Act of the Republic of Belarus "on measures to prevent the legalization of income obtained by illegal means" and provisions on the financing of terrorism. These provisions reflect the existing distribution of competencies among Government agencies concerned with financial monitoring and prevention of the financing of terrorism.

The draft law strengthens the following competencies of Government agencies dealing with prevention of the financing of terrorism:

The National Bank of the Republic of Belarus monitors banks and non-bank credit and financial institutions;

The Securities Committee, under the Council of Ministers of the Republic of Belarus and its inspectorates, monitor professional participants in the securities market, persons engaged in exchange activities and lottery organizers;

The Ministry of Communication and Informatics monitors postal communication operators;

The Ministry of Justice monitors notaries, agencies providing legal services, lawyers and other independent legal specialists — if they are making a financial transaction on behalf of or at the request of their client in connection with the following types of activities: the purchase and sale of real estate; management of the client's money, securities or other assets; management of bank and savings accounts or securities accounts; the creation and supply of work or the management of legal persons or entities, and the acquisition and sale of enterprises as property;

The Ministry of Sports and Tourism monitors casinos, betting offices, organizers of totalizators, computer (electronic) games and other gaming institutions (possessing slot machines, or other gaming equipment or devices);

The Ministry of Finance monitors persons trading in precious metals and precious stones, insurance and reinsurance companies, mutual assurance associations and insurance brokers;

In the absence of a Government agency monitoring activities to prevent the legalization of income and the financing of terrorism by persons carrying out financial transactions, such monitoring is carried out by the financial monitoring body.

1.3. Belarus adheres to the principle of *au dedere aut judicare* (extradite or prosecute), provided for in the obligations that it has assumed under international legal documents, including on the basis of a number of conventions and protocols related to combating terrorism.

Belarus holds that terrorism cannot be justified by political or any other motivations. The extradition or prosecution of a person accused of committing a terrorist act is decided within the framework of international agreements or on the basis of the principle of reciprocity, in accordance with the criminal legislation of the Republic of Belarus.

On 18 May 2004, the Republic of Belarus Act' "on international legal assistance in criminal matters" was adopted. Pursuant to this Act, a draft law was prepared "on amending and supplementing the Code of Criminal Procedure of the Republic of Belarus concerning the provision of international legal assistance in criminal matters".

In accordance with the draft law, section XV of the Code of Criminal Procedure of the Republic of Belarus will be issued in a new edition. This section will be called "International legal assistance in criminal matters" and will define the following:

Authorities in the Republic of Belarus competent to adopt decisions on the provision of international legal assistance in criminal matters (article 469);

Information to be contained in a request by the competent authority of a foreign State for the provision of assistance (article 470);

General grounds for refusal to provide assistance (article 471);

Procedure for executing a request by the competent authority of a foreign State for the provision of assistance (article 472), and the content and form of such a request (article 473);

Procedure for submitting procedural and other documents (articles 474 and 475);

Summoning of the victim, witness, civil plaintiff, civil respondent, their representatives and experts (article 476);

Information enclosed in the request by the competent authority of a foreign State on the transmission to it of substantive evidence (article 477);

Procedure for transmitting substantive evidence to the competent authority of the Republic of Belarus (articles 478 and 479);

Legal force of evidence obtained on the territory of a foreign State (article 480);

Procedure for transit transport through the territory of the Republic of Belarus (articles 481, 482, 483 and 484);

Procedure for the temporary transfer of persons kept in custody or serving a sentence in the form of imprisonment, for the purposes of carrying out procedural actions with their participation (article 486);

Establishment of the whereabouts of persons (articles 486, 487, 488 and 489);

Extradition and the circumstances that are the grounds for extraditing a person to a foreign State for the institution of criminal proceedings against him and/or for him to serve a sentence in the form of imprisonment (articles 490 and 491);

Procedure for submitting a request for the extradition of a person situated in the territory of the Republic of Belarus and the list of documents enclosed in such a request (article 492);

Grounds for refusing to extradite a person (article 493);

Ensuring the extradition of a person to a foreign State (article 494);

Postponement of the extradition of a person (article 495);

Temporary extradition of a person (article 496);

Conflicts arising from the execution of a request to extradite a person (article 497);

Procedure for the competent authority of the Republic of Belarus to draw up a request for the extradition of a person situated in the territory of a foreign State (article 498);

Ensuring the extradition of a person to the Republic of Belarus (article 499);

Assurances to a person extradited to the Republic of Belarus (article 500);

Temporary extradition of a person and ensuring his return (articles 501 and 502);

A decision on extradition or temporary extradition taken at the request of the competent authority of a foreign State (article 503);

An appeal against a decision on the extradition or temporary extradition of a person, and verification of its legality (article 504);

International legal assistance in the criminal prosecution of persons suspected or accused of committing offences (chapter 54, articles 505-515);

The execution of court decisions on criminal matters that have entered into legal force (chapter 55, articles 516-527);

Ensuring the execution of requests for the provision of separate forms of international legal assistance in criminal matters (chapter 56, articles 528-537).

Article 493 of the draft law contains a list of the grounds for refusal to extradite a person. The extradition of a person shall not be permitted if:

(1) The person whose extradition is requested is a citizen of the Republic of Belarus;

(2) The person whose extradition is requested was granted asylum in the Republic of Belarus;

(3) The purpose of the request for extradition is the criminal prosecution or punishment of the person whose extradition is requested on the grounds of race, sex, religion, nationality or political convictions;

(4) The act that is the grounds for the extradition request is not an offence in accordance with the Criminal Code of the Republic of Belarus;

(5) The offence for which extradition is requested is a military offence;

(6) The punishment for committing the act that is the grounds for the extradition request, in accordance with the Criminal Code of the Republic of Belarus or the criminal legislation of the foreign State, is provided for in the form of imprisonment for a period of less than one year;

(7) The person whose extradition is requested was sentenced to punishment in the form of imprisonment for a period of less than six months;

(8) There is a court decision by the Republic of Belarus that has entered into legal force recognizing a decree of the Prosecutor-General of the Republic of Belarus or his deputies whereby the extradition of the person is deemed to be illegal;

(9) There is an irrevocable decision of the criminal prosecution agency of the Republic of Belarus on the refusal to initiate criminal proceedings against the person referred to in the request or on the cessation of criminal proceedings, or a court sentence or decision (ruling) of the Republic of Belarus that has entered into legal force on the cessation of criminal proceedings in connection with the same act;

(10) A criminal case cannot be initiated or a sentence cannot be carried out because of a lapse of time or for another lawful reason, in accordance with the legislation of the Republic of Belarus;

(11) The offence for which extradition is requested is punishable by the death penalty under the law of the foreign State, whereas the death penalty is not imposed for such an offence under the Criminal Code of the Republic of Belarus, and if the foreign State has not provided assurances that the death sentence will not be passed, or, if it is passed, that it will not be carried out;

(12) An act is adopted in the Republic of Belarus granting a pardon to the person whose extradition is requested or amnesty to the person who committed the offence for which extradition is requested;

(13) The person has fully served a sentence and been subject to other measures of criminal liability, or is exempt from serving a sentence;

(14) There are general grounds for a refusal to provide international legal assistance in criminal matters provided for in article 471 of the proposed draft law, section XV of the Code of Criminal Procedure of the Republic of Belarus.

The second part of article 493 stipulates that the extradition of a person may be refused if:

(1) The act for which the extradition was requested was committed in the territory of the Republic of Belarus or against the interests of the Republic of Belarus;

(2) A criminal prosecution for the same act is being carried out in the Republic of Belarus against the person whose extradition is requested, or the person is serving a sentence;

(3) There is a request for the extradition of the same person from several States and the person was extradited, or will be extradited, to another State;

(4) A criminal prosecution of the person whose extradition is requested has been initiated under a private indictment;

(5) The competent authority of the foreign State has not undertaken an obligation on behalf of the State to provide similar legal assistance under conditions of reciprocity or the assurances provided for in part 2, article 491, in the proposed draft of section XV of the Criminal Code of Procedures of the Republic of Belarus.

Article 491 defines the circumstances that are the grounds for the extradition of a person to a foreign State and the adoption of a decision to extradite, and contains instructions that the extradition of a person to a foreign State in order to institute criminal proceedings against him and/or for him to serve a sentence in the form of imprisonment is subject to the following conditions:

(1) The act for which a request is made to extradite a person in order to institute criminal proceedings against him is criminally punishable in accordance with the Criminal Code of the Republic of Belarus and the legislation of the foreign State, and for the commission of which provision is made for punishment in the form of imprisonment for a period of not less than one year or a more severe penalty;

(2) The act for which a request is made to extradite a person in order to serve a sentence, in accordance with the Criminal Code of the Republic of Belarus and the legislation of the foreign State, is criminally punishable, and for its commission the

person whose extradition is requested is sentenced to imprisonment for a period of not less than six months or a more severe penalty.

The second part of this article establishes that the extradition of a person can be carried out only if the competent authority of the foreign requesting State provides assurances that, without the agreement of the competent authority of the Republic of Belarus, the person whose extradition is requested will not be subject to criminal prosecution or sentenced or detained for the purpose of serving a sentence for any offence committed prior to his extradition, except in respect of the offence for which he was extradited, and will not be extradited to a third State.